

APPENDIX B

HEARING OFFICER'S SCRIPT FOR RC/RD HEARING

1. OPENING STATEMENT

The hearing will be in order.

This is a formal hearing in the matter of _____, Case No. _____, before the National Labor Relations Board.

The Hearing Officer appearing for the National Labor Relations Board is:

All parties have been informed of the procedures at formal hearings before the Board by service of a Statement of Standard Procedures with the notice of hearing. I have additional copies of this statement for distribution, if any party wants more.

Will counsel please state their appearances for the Record?

For the Petitioner: _____.

For the Employer: _____.

For the Intervenor: _____.

Are there any other appearances? _____.

Let the record show no (further) response.

Are there any other persons, parties or labor organizations in the hearing room who claim an interest in this proceeding?

Let the record show no (further) response.

2. INTRODUCTION OF FORMAL PAPERS

- ☐ I now propose to receive the formal papers. They have been marked for identification as Board's Exhibit 1-a through 1-__, inclusive, Exhibit 1-__ being an index and description of the entire exhibit. The exhibit has already been shown to all parties. Are there any objections to the receipt of these Exhibits into the record?
- ☐ Hearing no objections, the formal papers are received in evidence.

(If the parties agree to Board Exhibit 2, introduce that exhibit into the record as

follows and then proceed to the appropriate section below:)

- ❑ The parties to this proceeding have executed and I have approved a document which is marked as Board Exhibit 2. That Exhibit contains a series of stipulations including, among other items, that the petitioner is a labor organization within the meaning of the Act, there is no contract bar and the Employer meets the jurisdictional standards of the Board. Are there any objections to the receipt of Board Exhibit 2?
- ❑ Hearing no objection, Board Exhibit 2 is received in evidence.

(If Board Exhibit 2 is not agreed upon, proceed with section 3 below.)

3. PREHEARING MOTIONS

Are there any pre-hearing motions (*e.g., motions to quash subpoenas*) made by any party that need to be addressed at this time?

4. INTERVENTION

Are there any motions to intervene in these proceedings to be submitted to the Hearing Officer at this time? Are the parties aware of any other employers or labor organizations that have an interest in this proceeding? The Hearing Officer hears no (further) response.

(If there is a motion to intervene, then...)

M. _____, please state the correct and complete name of the Intervenor.

(if there is no objection)

The motion of _____ for intervention herein is granted (denied).

5. JURISDICTION

Will the Employer please state its full and correct name for the record?

(If necessary): Are there any objections to having the petition and other formal papers amended so that the name of the Employer will correctly appear in the captions thereon as _____? Hearing no objection, the amendment is allowed.

Can it be stipulated that the Employer is engaged in commerce within the meaning of the National Labor Relations Act and is subject to the jurisdiction of the National Labor Relations Board and that commerce facts are as follows:

M. _____, do you so stipulate for the Employer?

M. _____, do you so stipulate for the Petitioner?

M. _____, do you so stipulate for the Intervenor? *(if necessary)*

The stipulation is received.

6. LABOR ORGANIZATION

M. _____, is the correct and complete name of the Petitioner that which appears on the petition filed in this case, _____?

(If necessary): Are there any objections to having the petition and other formal papers amended so that the name of the (Petitioner) will correctly appear in the captions thereon as _____?

Hearing no objection, the amendment is allowed.

Can it be stipulated that the Petitioner herein, _____, is a labor organization within the meaning of the National Labor Relations Act, as amended?

M. _____, do you so stipulate for the Employer?

M. _____, do you so stipulate for the Petitioner?

M. _____, do you so stipulate for the Intervenor? *(if necessary)*

The stipulation is received.

(Obtain the same stipulation for any Intervenor)

7. ISSUES AND BURDENS OF PROOF

Will the parties please identify the issues for hearing and their positions on each issue?

Employer?

Petitioner?

Intervenor?

(If the issue involves a presumption under Board law, advise the party with the burden that the burden lies with it and say the following:)

Please be aware that because (e.g., single facility unit) involves a presumption under Board law, the burden lies with the party seeking to rebut the presumption. You must present specific, detailed evidence in support of your position; general conclusionary statements by witnesses will not be sufficient.

(If the issue involves statutory exclusions, such as 2(11) supervisory status, or exclusions based on policy considerations, such as managerial status, confidential status, independent contractor or agricultural workers, advise the party with the burden that the burden lies with it and say the following:)

Please be aware that because (e.g., supervisory status) involves a statutory exclusion, the party seeking to exclude employees on these bases bears the burden of proof. You must present specific, detailed evidence in support of your position; general conclusionary statements by witnesses will not be sufficient.

8. COLLECTIVE BARGAINING HISTORY

(If there is no collective bargaining history, the record should reflect that fact. If there is a collective bargaining history, obtain details about the nature and origin of that relationship and include those facts in any stipulation. See Section 9 in Outline of Hearing. Read the stipulation into the record.)

M. _____, do you so stipulate for the Employer?

M. _____, do you so stipulate for the Petitioner?

M. _____, do you so stipulate for the Intervenor? (if necessary)

The stipulation is received.

9. CASES PENDING IN OTHER REGIONS

Are there any petitions pending in other Regional Offices involving other facilities of the Employer?

10. BARS TO CONDUCT OF ELECTION

Can it be stipulated that there is no contract or other bar in existence that would preclude the processing of this petition?

M. _____, do you so stipulate for the Employer?

M. _____, do you so stipulate for the Petitioner?

M. _____, do you so stipulate for the Intervenor? (if necessary)

The stipulation is received.

11. APPROPRIATE UNIT

(If parties can stipulate to all or part of the unit description, use the appropriate stipulation below:)

A. (full unit:) - Can it be stipulated that a bargaining unit that includes _____ and excludes _____ is appropriate for the purposes of collective bargaining?

(Read from Petition or off-the-record discussion notes of unit)

B. (partial unit:) - Can it be stipulated that any unit found appropriate by the Regional Director should include _____ and exclude _____?

M. _____, do you so stipulate for the Employer?

M. _____, do you so stipulate for the Petitioner?

M. _____, do you so stipulate for the Intervenor? (if necessary)

The stipulation is received.

(Sample supervisor stipulation language:)

Can it be stipulated that _____ is a supervisor within the meaning of Section 2(11) of the Act and as such possesses and exercises one or more of the following authorities: hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action; utilizing independent judgment in exercising such authority; and, therefore, should be excluded from the bargaining unit?

M. _____, can you so stipulate for the Employer?

M. _____, can you so stipulate for the Petitioner?

M. _____, can you so stipulate for the Intervenor?

12. FRAMING ISSUES

Frame the remaining issue(s) on the record. Get the parties to agree on the issue(s).

It is my understanding that the issue(s) to be litigated today are _____
_____ (i.e., supervisory status of Mr. John Wayne,
whether the quality control employees have a community of interest with the
plant employees, single versus multi-location unit, etc.)

Are there any other issues that I am not aware of? (If no response, proceed to
13,.. **Presentation of Evidence**; if a response, let the parties state their position
on that issue, then proceed to 13., **Presentation of Evidence**)

13. PRESENTATION OF EVIDENCE

(Generally the Employer should begin, but the hearing officer can use his/her
own judgment and have the parties present their evidence in whatever order
makes the most sense. A witness should be presented to testify about the overall
structure of the Employer's operations and organization.)

Employer, please present your first witness.

(Employer calls first witness.)

(Stand and Swear in each Witness:) **Please raise your right hand. Do you
solemnly swear that the testimony you are about to give will be the truth, the
whole truth and nothing but the truth, so help you God?**

(If the witness objects to swearing in the indicated fashion, ask the witness:)
Do you solemnly affirm that you will testify truthfully at this hearing?

(Swearing in an Interpreter:) **Please raise your right hand. Do you
solemnly swear that you are fluent in both English and _____
(foreign language) and that you will faithfully and truly, to the best of
your skill, knowledge and ability, translate from English to _____
(foreign language) and from ____ (foreign language) to English when called
upon to do so during the hearing, so help you God?**

(After they confirm, ask the witness to:) **Please state your name and spell it
for the record.**

(After Employer has rested, proceed to the next party.)

Petitioner you may call your first witness.

(After Petitioner has rested, proceed to the next party, if any.)

Intervenor you may call your first witness (if necessary).

14. COMPLETING AND CLOSING THE RECORD

(See Sections 15 and 16 of the Outline of Hearing, Section II A, for instructions on completing the record)

(To the extent that there are issues that have been resolved during the hearing, list those resolved issues at this point.)

M. _____, what is the Employer's final position regarding (unit contentions, inclusions or exclusions or other issues raised during the hearing)?

M. _____, what is the Petitioner's final position regarding (unit contentions, inclusions or exclusions or other issues raised during the hearing)? Is the petitioner prepared to proceed to an election in any unit found appropriate by the Regional Director or the Board?

M. _____, what is the Intervenor's final position regarding (unit contentions, inclusions or exclusions or other issues raised during the hearing, if necessary)? Does the Intervenor wish to appear on the ballot in any unit found appropriate by the Regional Director or the Board?

Any outstanding stipulations agreed to during these proceedings are now received.

Are the parties willing to waive the filing of briefs?

***(If not:)* Briefs are due by close of business on _____. Any motion for extensions should be addressed to the Regional Director.**

The parties are reminded that they should request an expedited copy of the transcript from the court reporter. Late receipt of the transcript will not be grounds for an extension of time to file briefs if you fail to do so.

If there is nothing further, the hearing will be closed.

***(Absent response)* The hearing is now closed.**

***(If the hearing is being adjourned)* If there is nothing further, the hearing will be adjourned to _____ (indefinitely).**

HEARING OFFICER'S GUIDE

EXHIBIT RECORD

[illegible]